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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/779,623 | 02/18/2004 | Takao Otsuka | Q79875 | 9092 |

7590 07/26/2005

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3213

EXAMINER

LOPEZ, MICHELLE

| | |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3721

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/779,623 | OTSUKA ET AL. | |
| | Examiner | Art Unit | |
| | Michelle Lopez | 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7,8,10,11 and 13 is/are rejected.
- 7) ☒ Claim(s) 9,12,14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2005 has been entered..

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7-8, 10-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 4,771,589) in view of Baranowski (US 5,407,057).

Mueller discloses an apparatus with an arraying and supplying station via a feeder not shown numerically (see col. 3, lines 65-68) for supplying the encased products "C" with the caps oriented in one direction, a sorting station at the vicinity of 12 for sorting the encased products "C" to a first feed path 14 in a first attitude C, a second feed path 16 for feeding the encased products in a second attitude "C1", a packaging station 26 for packaging the encased products with a packaging sheet (see Fig. 2), and a movable presser (not shown numerically) at the vicinity of 130.

The first attitude is an attitude to array the encased products abreast, i.e. side by side, as shown in Figs. 1 and 2, wherein a first delivery unit 90 for feeding a first group "C" of the

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encased products with the caps oriented upwardly and a second delivery unit 70 for inverting a second group "C1" of the encased products to orient the caps downwardly, and feeding the encased products to discharge the encased products alternately via station 22.

The first and second delivery units 90,70 comprise respective first and second screws (see Fig. 1), wherein the second delivery unit 70 has guides (see Fig. 3) for reversing the encased products in co-action with the second screw 70

With respect to claims 7 and 13, Mueller does not disclose that said second attitude is an attitude to array said encased products tandem (claim 7), wherein the second feed path has a knock-down mechanism for knocking down the encased products to orient the caps in one direction (claim 13).

However, Baranowski teaches a knock-down mechanism (see Fig. 9) for the purpose of displaying products 12 from a vertical attitude to an horizontal attitude, thereby providing a tandem configuration wherein the products 12 are placed one behind the other. In view of Baranowski, it would have been obvious to one having ordinary skills in the art to have provided Mueller's second feed path 16 with a knock-down mechanism in order to display the encased products from a vertical attitude to an horizontal altitude, thereby providing a tandem configuration wherein the encased products are placed one behind the other.

Allowable Subject Matter

3. Claims 9, 12, and 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant contends that prior art Mueller fails to teach a packaging apparatus having the feature of selectively sorting the encased products to first and second paths.

However, Examiner contends that Mueller does teach a packaging apparatus having the feature of sorting the encased products to first and second paths by "selectively sorting" the products in that they are separated into the two paths from a single filling machine. Contrary to applicant arguments, the products that move through only that path 14 (or 16) are fed through only that path 14 (or 16) and not through both paths. Therefore, each article is "selected" into one of the two paths (as shown in col. 2; 36-43 and col. 3; 65-68).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN SIPOS
PRIMARY EXAMINER